REMARKS/ARGUMENTS

This Response is promptly filed to place the above-referenced case in condition for immediate allowance.

The status of the claims is as follows:

Cancelled:	None;
Amended:	None;
Added:	None; and
Currently outstanding:	1 - 6, 12, 15, 16, and 19.

No new matter has been added to the application.

From the outstanding Office action: Claims 1-6, 12, 15, 16, and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,890,487 issued on April 6, 1999 to Kimmel for a Corn Filled Heating Pad.

The drawings are apparently accepted.

Reconsideration is respectfully requested.

Applicant has not amended the claims in this response, nor did Applicant's previous amendments make necessary the Examiner's new ground of rejection. The Examiner has now indicated that as the Kimmel '487 patent discloses "cleansed corn," that anticipates Applicant's claims. Applicant did not amend his "degermed" language in any prior amendment, consequently, Applicant respectfully objects to the making of the present Office action final as Applicant has not had a fair opportunity to address this issue of cleansed corn and the newly-applied art.

Furthermore, Applicant believes the Examiner has taken the term "degermed" out of context and in defiance of M.P.E.P. § 2111.01 where claim terms must be read in light of the Applicant's specification. Applicant has provided a clear definition in the specification of the term "degermed" that addresses only the removal of the seed embryo and not the germs or bacteria present on or in the seed.

Additionally, even in light of Applicant's objections to the new grounds for rejection and to the Examiner's current interpretations of the claim language, the Examiner's interpretation of the Kimmel '487 does not render it anticipatory of Applicant's claims.

If Applicant's language is read to mean that the corn is rendered free from germs (which Applicant believes to be in defiance of his description and the claims as properly interpreted), the Kimmel '487 patent does not anticipate Applicant's claims.

In Kimmel, simply cleaning the corn does not render it sterile and free from germs. Instead, it just renders it more clean than it was before. As set forth in the Kimmel '487 patent, although "complete details" of the manufacturing process are stated (col. 2, ll. 41-42), the Kimmel '487 patent merely indicates that the corn is "cleaned" and not de-germed or sterilized.

The Kimmel '487 patent does not go into detail with respect to the treatment of the corn in order to make it clean. Only the passing statement is made. Consequently, there is no teaching, description, or indication that the corn used in the Kimmel '487 patent disclosure has been degermed.

In the alternative, if the Examiner is considering that the "cleaning" of the corn removes from it the germ/embryo and tip cap thereof, Applicant respectfully informs the

Examiner that in order to degerm/de-embryo corn, a multi-step process occurs. First, the individual kernels are split/separated from the cob. Each kernel is then soaked in water to soften and hydrate the kernel, often for about twenty-four (24) hours. The germ/ embryo and the tip cap of the corn is then removed from each of the kernels. The kernels are then soaked in water again, often for about twelve (12) hours. The soaking in the water allows the exterior skin layer (the bran coat) to be easily removed. Once the germ/embryo portion, the tip cap, and the skin portion of each of the kernels are removed, they are kiln dried to render a material that has material characteristics somewhat like ceramic or the like.

The Kimmel '487 patent does not describe, disclose, or teach the use of corn from which the germ/embryo has been removed. The cleaning process in the Kimmel '487 patent is not one that removes the germ/embryo from the kernel.

The degermed corn in Applicant's specification and claims is completely different from that of cleaned corn which may just be run through a soapy solution and rinsed off, merely rinsed, or otherwise may be free from debris as by a selective sorting mechanism that only allows particles of certain size to pass through and which collects grains at a particularly advantageous layer or strata thereof.

Applicant's declaration under 37 C.F.R. § 1.132 substantiates this degermination process and Applicant's expertise in the matter and art at hand also indicates the substantial difference between the degermination of corn for use in therapeutic thermal applications and the cleaning of corn for such uses.

The Examiner has also cited a number of patents and publications as pertinent to the presently claimed invention. Since none of these have been relied upon as a reference against Applicant's claims, no further comment is deemed necessary.

In view of the above, the Examiner is respectfully requested to reconsider his position in view of the remarks made herein and the structural distinctions now set forth. The Examiner's rejections of the outstanding claims are believed to no longer apply. It is now believed that this application has been placed in condition for allowance, and such action is respectfully requested. Prompt and favorable action on the merits is earnestly solicited. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The statements made herein with respect to the disclosures in the cited references represent the present opinions of the undersigned attorney. In the event that the Examiner disagrees with any of such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective references providing the basis for a contrary view.

If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant invites the Examiner to contact Applicant's representative at the number listed below.

With the above-referenced changes, it is believed that the application is in a condition for allowance; and Applicant respectfully requests the Examiner to pass the application on to allowance. It is not believed that any additional fees are due; however, in the event any

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additional fees are due, the Examiner is authorized to charge Applicant's Attorney's Deposit Account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Date: May 22, 2006

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DMC/ASJ/at

Enclosure
Acknowledgement Postcard
Declaration Under 37 C.F.R. § 1.132 Traversing Grounds of Rejection

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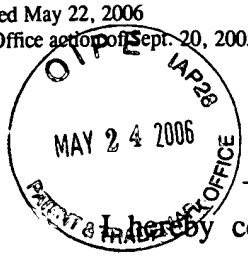

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Daniel M. Cislo, Reg. No. 32,973 Date

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